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Date August 24, 2005

To Supervising Examiner Anthony Knight
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U.S. Patent and Trademark Office
Alexandria, VA

Facsimile number 571-273-3687 (Direct)

From Judith Sherman (Phone: 858-678-4740)
U.S. Patent Paralegal for Stephanie L. Seidman, Reg. No. 33,779

Re Method for Developing Medical and Biochemical Diagnostic Tests using Neural
Networks - Related Applications
USSN: 10/043,356
Filed: January 11, 2002
Attorney Ref.: 17101-003006 / 801F

Number of pages
including this page 94

Message Further to today's telephone discussion regarding the "lost" status of the subject
application file, attached please find the following documents and receipt dates:

03/24/2003 - Supplemental IDS-1449-4 sheets w/PCTs (Total 9 pgs.)
10/22/2002 - Executed Oath and Declaration (5 pgs.)
07/03/2002 - Supplemental IDS-1449-2 sheets (7 pgs.)
05/24/2002 - Preliminary Amendment (55 pgs.)
04/26/2002 - Information Disclosure Statement-1449-8 sheets (13 pgs.)
07/19/2004 - Change of Address, Revocation and New Power of Attorney which
was faxed to EBC at that time.

I note in Public PAIR that the address has been corrected, however, it was
populated with attorneys from a prior firm that were not even on the prior POA. I
have been advised that each art unit/tech center is responsible for updating and
correcting the COA/POA data. Would you be so kind as to also have the proper
person correct the attorney names per the attached data provided.

Thank you very much for your assistance with reconstructing this application and
getting it declared an electronic file.



NOTE: This facsimile is intended for the addressee only and may contain privileged or
confidential information. If you have received this facsimile in error, please immediately call us
collect at 858 678-5070 to arrange for its return. Thank you.

Knight, Anthony

From: Hirl, Joseph
Sent: Monday, August 08, 2005 12:21 PM
To: Knight, Anthony
Subject: RE: possible double patenting 2nd pair of eyes case

Regarding DP, from the specification of 09/699,628, the following is to be noted:

Current automatic "performance analyzers" present performance data textually or graphically and direct the user's attention to patterns that may indicate a performance problem. These tools, however, lack an understanding of the meaning, or "semantic knowledge," of the analyzed program, which limits their effectiveness in solving performance problems.

Further:

Without knowledge of the semantics of the program, or how program components are supposed to run, an automatic performance analyzer cannot adequately determine whether a particular component of a program exhibits poor performance.

Also:

The semantic may comprise a class of processing and a succitude, i.e. a degree of poor performance, associated with the class. A class is anything that could contribute to the poor performance of a computer program. Use of semantic knowledge facilitates identification of impediments that prevent the program from executing a peak speed.

The prior patent to sun Microsystems deals with the "old" concept of the performance analysers. The invention that deals with application 09/699628 focuses on semantic knowledge, defined in the specification, to be the meaning of the "program" or subprogram which would then put into perspective quantitatively results is associated with the work done or expected to be done.

It is on this basis of assigning a semantic to the performance of the program and then measuring the performance based on the semantic that places application 09/699628 beyond the concern of an obvious double patenting problem.

Regarding benchmarking which I interpret to be a concern for abstractness related to numerical values cast into the area of nonfunctional descriptive material. MPEP 2106 IV B. 1. (a) sets forth the following:

In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claims 1, 16, and 31 of the subject application deal with a program executed in a data processing system. This means that a computer readable medium with data structures and functional interrelationships allows the data structure's functionality to be realized under the condition of "semantics" wherein performance measurements will be made related to work done or expected work to be done. The limitation related to work which is synonymous with the term usefulness further establishes the statutory nature of this application.

Joe

-----Original Message-----

From: Knight, Anthony
Sent: Thursday, July 21, 2005 12:47 PM
To: Hirl, Joseph
Subject: possible double patenting 2nd pair of eyes case

Joe,

take a look at the following case 09/699628 and US Patent No. 6434714. It looks like claims

1, 16, and 31 of the application are the same as 1, 2, and 3 of the patent, respectively.

Also, it appears that the claims of the application are just directed to benchmarking.

Please review and make an examiner's amendment if appropriate.

Thanks

Tony

Anthony Knight
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